



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 08-05592
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Donna K. Taylor, Esq.

July 27, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) on November 5, 2007. On January 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a March 11, 2009, response, Applicant denied two of the delinquent accounts alleged in the SOR were hers and requested a hearing. The matter was referred to DOHA on April 14, 2009, and the case was assigned to me that day. Department Counsel and Applicant agreed to a hearing date of April 30, 2009. A Notice of Hearing was issued to that effect on April 15, 2009. The hearing was rescheduled for May 7, 2009, pursuant to a May 4, 2009, amended notice. I convened the hearing as

scheduled. Applicant was represented by counsel, gave testimony, and offered six documents which were admitted without objection as exhibits (Exs.) A-F. Department Counsel offered four documents admitted as Exs. 1-4 without objection. The record was held open through May 22, 2009, to give Applicant the opportunity to supplement the record. The transcript (Tr.) of the proceeding was received on May 21, 2009. Two additional documents were received by Department Counsel on May 22, 2009, and forwarded to me on May 27, 2009. They were accepted into the record without objection as Exs. G-H and the record was closed on May 27, 2009. Based upon a review of the testimony, submissions, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

Applicant is a 41-year-old business manager for a defense contractor. She has worked for the same employer for nearly six years. Single and with some college credits earned, she has essentially been gainfully employed in some capacity since she was 15 years of age.

In early 2000, Applicant left her home and relocated to a different region of the country to work on a defense contract. During her annual physical, it was determined she required surgery for a serious medical condition. The surgery necessitated two months of recovery before she could return to work. About a year later, she moved to another region to work for another employer. Around this time she started providing her twin sister with financial support. It was later determined that she required a second surgery for a condition often caused by her prior surgery. This procedure required a few weeks of recovery time, but posed no threat to Applicant's finances. In 2005, a third surgery was performed requiring a brief recovery. She assumed all related bills were covered by her health insurer.

During the period Applicant was providing financial help to her twin sister, the amount of money she sent started out being nominal. Her sister and brother-in-law would then pay Applicant back. Applicant sent money directly from her own pay check, then repaid her credit card account with her sister's reimbursement. Eventually, the assistance grew to as much as \$1,600 per month and repayment became protracted. This occurred about the time of Applicant's third surgery and impacted Applicant's finances.¹ Eventually, the repayments stopped. Applicant worried about whether her nephew and nieces were receiving adequate care, food, and necessities. Especially close to the young children and getting concerned about their family situation, she continued sending money until she became overextended financially. At the same time, her employer cut salaries on her current project. Ultimately, she fell behind on her credit card bills, although she had sufficient funds for her own day-to-day expenses. Throughout most of this time, she was unaware her sister was experiencing a drug and alcohol problem. Her sister's situation worsened and state authorities moved to separate the sister from her children. In 2005, the authorities asked Applicant if she

¹ Tr. 54.

could help. Applicant moved her sister's four very young children to her own state of residence and supported them for close to a year.²

In 2006, Applicant's sister and brother-in-law joined them. The relatives eventually moved back to their home to start anew in 2007. Shortly thereafter, Applicant's sister returned to substance abuse. In 2008, Applicant moved her sister to Applicant's town of residence and enrolled her in a substance abuse program. After she finished the program, Applicant firmly told her sister that in the future "the most I can offer them is to come stay with me and I would help them with employment and help take care of the kids," now aged 15, 10, 8, and 5. In sum, Applicant expended approximately \$10,000-\$12,000 on her sister and her sister's family.³

During her tenure with her current employer, Applicant has received raises annually. She has not incurred a debt for which she could not pay in several years. She currently has no trouble living within her means. Although Applicant has not received formal financial counseling, she now follows the concepts and strategies set forth by a popular financial author and speaker with regard to restructuring one's income. Using his system, she has already created a \$4,000 emergency fund and is checking to make sure she is totally debt-free with a clean credit report. To her knowledge, her only delinquent debts were those identified in the SOR.⁴ Applicant has a 401(k) plan with a balance of approximately \$60,000, a savings account in which she maintains about \$5,000 in available funds, and leftover income after monthly expenses. Her only credit cards are two American Express accounts. She is timely on her car payment schedule, which currently has a balance of about \$3,000. She is current on her mortgage and ahead of schedule in her payments.

At issue in the SOR are five delinquent accounts. The Government "believes the evidence that [was presented at hearing showed] all of the allegations, with the exception of ¶ 1.b, have been resolved or paid.⁵ Their status is as follows:

SOR ¶ 1.a. **Telecommunications bill (\$682) – *In repayment*** – Before Applicant reported this credit report entry as fraud, her twin sister disclosed to Applicant that she created the account for her own benefit. The sister returned the appliances related to the service and agreed to repay the balance personally. It is currently in repayment.⁶

² Tr. 44.

³ Tr. 56.

⁴ Tr. 49-50.

⁵ Tr. 57. It was then argued that the primary concern in the case was that the debts at issue "have only recently been resolved." Tr. 58.

⁶ Ex. D (Letter of Apr. 13, 2009).

Applicant will repay any balance still owed as of June 2009 if her sister has not paid the entire balance by then.⁷

SOR ¶ 1.b. **Credit card** (\$4,804) – *Negotiating with creditor* – This account was sold off and the current holder of the account could not be found despite the diligent efforts of Applicant and her attorney. Applicant is willing and able to pay any balance owed.⁸ After the hearing, the holder of the account was discovered. Applicant is now waiting for a final balance and is prepared to pay the balance immediately upon receipt.⁹

SOR ¶ 1.c. **Collection for cell phone** (\$990) – *Successfully disputed* – Never having had service with this company, Applicant disputed this credit report entry as a fraudulent entry. After an investigation, the collection agency determined the account was closed with no balance owed.¹⁰

SOR ¶ 1.d. **Medical bill** (\$576) – *Paid* – Applicant was previously unaware of this debt related to her final surgery. She had assumed her insurance company had previously paid this balance, but it had not. She paid off this account in March 2009 and is now awaiting reimbursement from her insurance company.¹¹

SOR ¶ 1.e. **Credit card** (\$14,437) – *Settled* – This account was used by Applicant to cover her personal expenses when she was sending her sister money. It was compromised for a settlement balance of \$3,000.¹² It was paid on March 4, 2009.¹³

At work, Applicant is rated as a “distinguished” employee on a five point scale with “distinguished” as the highest rating.¹⁴ Her employer’s project manager refers to Applicant as demonstrating “a high degree of integrity and trustworthiness. . . .”¹⁵ All her references reflect a thoughtful, thorough, committed working professional.

⁷ Ex. G (Attorney’s letter, dated May 22, 2009); Tr. 29-30. *See also* Ex. F (Sister’s letter).

⁸ Tr. 11-12, 57, 60.

⁹ Ex. G (Attorney’s letter, dated May 22, 2009); Tr. 33-37.

¹⁰ Ex. C (Collection agent letter, dated Mar. 11, 2009); Tr. 12.

¹¹ Ex. B (Bank statement); Tr. 12. *See also* Tr. 30-31; Ex. 2 (Financial interrogatory) at 5-6.

¹² Tr. 22-24.

¹³ Ex. B (Bank statement); Tr. 23. The \$3,000 was transferred through fraud or error by the collection agent twice. Applicant is making arrangements for the return of the second transfer.

¹⁴ Ex. E (Rating) at 3-5.

¹⁵ Ex. F (Undated letter of program manager) at 1.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common-sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁶ The burden of proof is something less than a preponderance of evidence. ¹⁷ The ultimate burden of persuasion is on the applicant. ¹⁸

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). "The clearly consistent standard

¹⁶ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.²² The Directive sets out several potentially disqualifying conditions under this guideline. Applicant acquired four of the five delinquent debts at issue while helping her sister financially.²³ Previously unaware of half of those four debts, all four remained unaddressed until after Applicant received the SOR apprising her of the negative entries on her credit report. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations). With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

The majority of debt Applicant owed was the result of her kindness toward her twin sister and her sister’s family. While initially misled as to the reasons behind their financial need, Applicant’s largess was entirely voluntary. The medical bill at ¶ 1.d, however, was a medically necessary procedure stemming from her last surgical procedure. She understandably assumed the medical bill had been paid by her health insurer, which was responsible for the bill. Instead, her health insurer failed to pay the balance and a derogatory entry was eventually entered on her credit report. Previously

¹⁹ *Id.*

²⁰ *Id.*

²¹ Executive Order 10865 § 7.

²² Revised Adjudicative Guideline (AG) ¶ 18.

²³ One debt was successfully disputed as not belonging to Applicant.

unaware of this entry, Applicant has since paid the balance and filed with her health insurer for reimbursement. With regard to this obligation, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) applies.

The majority of the debt owed was created while Applicant helped support her twin sister's family. Applicant believes her direct financial assistance amounted to approximately \$10,000 to \$12,000. After a few years of offering such support, Applicant eventually put her sister into a substance abuse center and firmly informed her that any future assistance would be of a non-monetary nature. FC MC AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies.

Applicant has educated herself with regard to personal finances by using a popular series of books or lectures by a well-known personal finance consultant. His system is designed to be done personally and at home. While informal in nature, what she has learned has been employed and has yielded genuine results with regard to both addressing her past debts and saving for future emergencies. Consequently, FC MC ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) applies.

Moreover, three of the five debts at issue have been satisfied or successfully disputed, representing a satisfaction of over \$16,000 of the approximately \$21,000 of alleged debt. What remains is a telecommunications bill currently in repayment by Applicant's sister and a credit card collection entity which Applicant only recently located and has been prepared to pay for the past several months. There is no reason to doubt her resolve in paying off that debt as soon as she receives a final accounting. FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. No other mitigating conditions apply.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and

other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole person” factors. Applicant is a successful professional who excels at her job and has earned the respect of her superiors. She demonstrated exceptional charity and familial devotion in her support of her twin sister and solid judgment in guiding her sister to a substance abuse program. She also showed both courage and resolve in informing her sister that future financial support would not be forthcoming. Using a popular personal finance program, Applicant created an emergency fund, satisfied her debts, and amassed significant savings. She addressed four of the five accounts at issue. Although she was previously unable to locate the collection agent for the fifth account at issue, her persistence recently paid off. She recently located that creditor, negotiated a settlement, is awaiting a final balance, and reserved the funds to satisfy that balance upon receipt.

As noted by Department Counsel, the main factor speaking against Applicant is that these delinquent debts remained unpaid until recently. To Applicant’s defense, however, she was previously unaware of the accounts noted at SOR ¶¶ 1.a, 1.c, and 1.d, which includes an account entry that was successfully disputed and determined not to be hers. Information identifying the company that currently holds the account noted at SOR ¶ 1.b was only recently discovered. While Applicant asserts no excuse or explanation in her failure to satisfy the obligation noted at SOR ¶ 1.e earlier, the fact remains that the obligation has been satisfied.

Moreover, this process does not employ a system of calculators or timetables to rank or prioritize satisfied debts in terms of the duration of their delinquency. Rather, it emphasizes consideration of the judgment displayed by an applicant, an applicant’s efforts to satisfy known debts, the success an applicant had in satisfying those debts, and consideration of an applicant in light of both the “whole person” concept and the concerns related to the guideline under consideration. Furthermore, this is not the case of an applicant who waited until after the hearing to pay off debts before the closing of the record. Applicant arrived at the hearing enlightened through the study of personal finance, with money in the bank, a demonstrated resolve to honor any and all debts, and evidence that the vast majority of her delinquent debt is satisfied. In doing so, Applicant mitigated financial considerations security concerns. I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge